### MEMORANDUM

TO:

**County Council** 

FROM:

Michael Faden, Senior Legislative Attorney

SUBJECT:

Introduction: Expedited Bill 4-09, Development Impact Tax - Deferral

Expedited Bill 4-09, Development Impact Tax - Deferral, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on February 10, 2009. A public hearing is tentatively scheduled for March 3 at 1:30 p.m.

Bill 4-09 would authorize the deferral of Development Impact Taxes for Transportation Improvement and Public School Improvement for a 12-month period.

| This packet contains       |  | <u>Circle</u> |
|----------------------------|--|---------------|
| Expedited Bill 4-09        |  | 1             |
| Legislative Request Report |  | 5             |
| Memo from County Executive |  | 6             |

F:\LAW\BILLS\0904 Development Impact Tax - Deferral\Intro Memo.Doc

| Expedited Bill No4-09 |                                       |  |  |  |  |  |  |  |
|-----------------------|---------------------------------------|--|--|--|--|--|--|--|
| Concerning: Developme | ent Impact Tax                        |  |  |  |  |  |  |  |
| Deferral              | <u> </u>                              |  |  |  |  |  |  |  |
| Revised: 2-9-09       | Draft No. 2_                          |  |  |  |  |  |  |  |
| Introduced: February  |                                       |  |  |  |  |  |  |  |
| Expires: August 1     | 0, 2010                               |  |  |  |  |  |  |  |
| Enacted:              | · · · · · · · · · · · · · · · · · · · |  |  |  |  |  |  |  |
| Executive:            |                                       |  |  |  |  |  |  |  |
| Sunset: April 1, 2010 |                                       |  |  |  |  |  |  |  |
| Effective:            |                                       |  |  |  |  |  |  |  |
| Ch, Laws of Mon       | it. Co                                |  |  |  |  |  |  |  |

# COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

#### AN EXPEDITED ACT to:

- (1) authorize the deferral of certain development impact tax payments for a certain period; and
- (2) generally amend the law regarding payment of impact taxes.

# By adding

Montgomery County Code Chapter 52, Taxation Section 52-51A

**Boldface** 

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

#### 52-51A. Deferral of payments. 2 Definitions. In this Section, the following words have the meanings 3 4 indicated: Department means the Department of Permitting Services. 5 (1) Director means the Director of the Department of Permitting (2) 6 Services. 7 Impact tax or tax means the Taxes imposed under this Article and (3) 8 9 Article XII. Owner means a person who has a legal record title interest in real (4) 10 property, including a creditor with a recorded lien on the 11 property, on which taxable development is proposed. 12 Authorization to defer. An owner may defer payment of all impact 13 (b) tax due, if the requirements of this Section are met, for 12 months 14 after a building permit is issued. 15 Conditions of deferral. 16 (c) An owner must apply for deferral of the impact tax to the 17 (1) Director on a form supplied by the Department. - 18 As part of the application, the owner must execute a written 19 <u>(2)</u> 20 agreement with the Director. The agreement must confirm that the owner consents to all terms and conditions of the deferral, 21 including collection of the deferred impact tax through the tax 22 sale process and recordation of the agreement or notice of the 23 agreement in the County land records. 24 The Director must record the agreement or notice of the (3) 25 agreement in the County land records. The notice must include a 26

Sec. 1. Section 52-51A is added as follows:

1

| 27 |            | conspicuous statement that indicates it is being recorded by or on        |  |  |  |  |  |  |  |  |
|----|------------|---|--|--|--|--|--|--|--|--|
| 28 |            | behalf of the County.   |  |  |  |  |  |  |  |  |
| 29 | <u>(d)</u> | Events accelerating payment. All deferred impact taxes and                |  |  |  |  |  |  |  |  |
| 30 |            | accumulated interest and penalty, if any, become immediately payable      |  |  |  |  |  |  |  |  |
| 31 |            | when:   |  |  |  |  |  |  |  |  |
| 32 | •          | (1) the ownership of the property which is subject to a lien for          |  |  |  |  |  |  |  |  |
| 33 |            | repayment of the impact taxes is transferred; or                          |  |  |  |  |  |  |  |  |
| 34 |            | (2) the property becomes subject to tax sale.                             |  |  |  |  |  |  |  |  |
| 35 | <u>(e)</u> | Payment; early payment; termination of lien.                              |  |  |  |  |  |  |  |  |
| 36 |            | (1) An owner must pay all deferred impact taxes on or before the end      |  |  |  |  |  |  |  |  |
| 37 |            | of the deferral period.   |  |  |  |  |  |  |  |  |
| 38 |            | (2) After the owner pays the deferred impact tax and any accrued          |  |  |  |  |  |  |  |  |
| 39 |            | interest and penalty, the Director must record a notice of                |  |  |  |  |  |  |  |  |
| 40 |            | termination of the tax deferral lien in the County land records.          |  |  |  |  |  |  |  |  |
| 41 |            | The notice must include a conspicuous statement that indicates it         |  |  |  |  |  |  |  |  |
| 42 |            | is being recorded by or on behalf of the County.                          |  |  |  |  |  |  |  |  |
| 43 | <u>(f)</u> | Interest and penalty for delinquent taxes. Impact taxes paid after the 12 |  |  |  |  |  |  |  |  |
| 44 |            | month deferral period expires accrue interest and penalty on the amount   |  |  |  |  |  |  |  |  |
| 45 |            | of the deferred taxes until paid at the rate which applies to delinquent  |  |  |  |  |  |  |  |  |
| 46 |            | real property taxes.  |  |  |  |  |  |  |  |  |
| 47 | (g)        | Lien on real property and collection. All taxes deferred and any          |  |  |  |  |  |  |  |  |
| 48 |            | accrued interest and penalty constitute a first lien on the real property |  |  |  |  |  |  |  |  |
| 49 |            | to which the taxes apply until paid and must be enforced as provided      |  |  |  |  |  |  |  |  |
| 50 |            | in Section 52-50(j). Except for a creditor which holds a lien on the      |  |  |  |  |  |  |  |  |
| 51 |            | property, the deferred taxes constitute a personal liability of the owner |  |  |  |  |  |  |  |  |
| 52 |            | of the property.  |  |  |  |  |  |  |  |  |

|                                 |   |  |   |   |  | <u>dulent</u>  |  |  |   |  | person  |  | _   |
|---------------------------------|---|--|---|---|--|--|--|--|---|--|---|--|---|
|                                 | know  | ingly su   | bmits a   | <u>fals</u>   | se or  | fraudu   | lent   | applica  | ation   | <u>or</u>  | <u>stateme</u>  | nt, c  | <u>)r</u>   |
|                                 | withh   | olds info  | ormation  | <u>in o</u>   | order  | to obta  | in a c   | leferra <u>l</u>   | unde  | r th   | is <u>Secti</u>   | on:  |   |
|                                 | <u>(1)</u>  | has cor  | nmitted   | a Cla   | ass A  | <u>violati</u>   | on;  |  |   |  |   |  |   |
|                                 | <u>(2)</u>  | <u>is</u> <u>liabl</u>   | e <u>for</u> an   | d m   | <u>ust re</u>  | pay to   | the  | County   | y <u>any</u>  | dei  | ferred in   | mpa  | <u>ct</u>   |
|                                 |   | taxes 1  | olus int  | erest   | and  | penal  | ty at  | the r  | ate w   | hic  | h appli   | es t   | <u>.0</u>   |
| •                               |   | <u>delinqu</u>   | <u>ent real</u>   | prop  | <u>perty</u>   | taxes f  | rom  | the date   | e of th   | <u>1e d</u>  | <u>leferral</u>   | to th  | <u>1e</u>   |
|                                 |   | date of  | paymen  | <u>ıt; an</u>   | <u>d</u>   |  |  |  |   |  |   |  |   |
|                                 | <u>(3)</u>  | is liable  | e for all   | cour  | t cos  | ts and   | expe   | nses of  | the C   | our  | <u>nty, incl</u>  | <u>udin</u>  | g   |
|                                 |   | attorne  | <u>y's fees.</u>  | <u>in a</u>   | <u>civil</u>   | action   | <u>brou</u>  | ght by   | the Co  | oun  | ty.   |  |   |
| <u>(i)</u>                      | Regu  | lations.   | The C   | Coun  | ty E   | xecutiv  | <u>'e m</u>  | ay ado   | opt re  | gul  | ations  | unde   | <u>er</u>   |
|                                 | Meth  | <u>od (2) to</u>   | admini  | ister   | this t   | ax defe  | erral  | prograi  | <u>m.</u>   |  |   |  |   |
| Sec.                            | 2. Sur  | set. Co  | ounty Co  | ode S   | Section  | on 52-5  | 51 <b>A</b> ,  | inserte  | d by  | Sec  | tion 1 c  | of th  | is  |
| Act, expire                     | s on Ap   | oril 1, 20   | 10.   |   |  |  |  | ,  |   |  |   |  |   |
| Sec.                            | 3. Exp  | edited ]   | Effectiv  | e Da  | ıte.   |  |  |  |   |  |   |  |   |
| The                             | Counci  | il declar  | es that   | this  | legi   | slation  | is n   | ecessa   | ry for  | th   | e imme  | ediat  | е   |
| protection (                    | of the  | public in  | nterest.  | Thi   | s Ac   | t takes  | effe   | ct 60 d  | days a  | afte   | r it bec  | ome  | s   |
| law.                            |   |  |   |   |  |  |  |  |   |  |   |  |   |
| Approved:                       |   |  |   |   |  |  |  |  |   |  |   |  |   |
|                                 |   |  |   |   |  |  |  |  |   |  |   |  |   |
| 01:11: 3.4.4                    |   |  | <u> </u>  |   | •1   |  |  |  |   |  | <u>.</u>  |  | _   |
|                                 | drews, P  | resident,  | County (  | Counc   | 211  |  |  |  | Dat   | e  |   |  |   |
| арргочей.                       |   |  |   |   |  | •  |  |  |   |  |   |  |   |
|                                 |   |  |   |   |  |  |  |  |   |  |   |  |   |
| Isiah Leggett, County Executive |   |  | <u>-</u>  |   |  | Dat  | e  | . <u>.                                   </u>  |   | _  |   |  |   |
|                                 | Sec. Act, expire Sec. The protection law. Approved: | (1) (2)  (i) Regulation Method Sec. 2. Sure Act, expires on Approved:  Philip M. Andrews, Papproved: | withholds info  (1) has con  (2) is liable taxes p delinque date of  (3) is liable attorner  (i) Regulations. Method (2) to Sec. 2. Sunset. Co Act, expires on April 1, 20 Sec. 3. Expedited I The Council declar protection of the public in law. Approved:  Philip M. Andrews, President, Approved: | withholds information (1) has committed (2) is liable for ar taxes plus interest delinquent real date of paymen (3) is liable for all attorney's fees, (i) Regulations. The Company Method (2) to administrate Sec. 2. Sunset. County Company | withholds information in c  (1) has committed a Cl.  (2) is liable for and m taxes plus interest delinquent real proposate of payment; an (3) is liable for all coun attorney's fees, in a  (i) Regulations. The Count Method (2) to administer  Sec. 2. Sunset. 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Andrews, President, County Council Approved: | withholds information in order to obta  (1) has committed a Class A violati (2) is liable for and must repay to taxes plus interest and penal- delinquent real property taxes f date of payment; and (3) is liable for all court costs and e attorney's fees, in a civil action (i) Regulations. The County Executive Method (2) to administer this tax defector Sec. 2. Sunset. County Code Section 52-54 Act, expires on April 1, 2010. Sec. 3. Expedited Effective Date. The Council declares that this legislation protection of the public interest. This Act takes law.  Approved:  Philip M. Andrews, President, County Council Approved: | withholds information in order to obtain a case (1) has committed a Class A violation;  (2) is liable for and must repay to the taxes plus interest and penalty at delinquent real property taxes from a date of payment; and  (3) is liable for all court costs and expensatiorney's fees, in a civil action brought fees, in | withholds information in order to obtain a deferral  (1) has committed a Class A violation;  (2) is liable for and must repay to the Count taxes plus interest and penalty at the redelinquent real property taxes from the dat date of payment; and  (3) is liable for all court costs and expenses of attorney's fees, in a civil action brought by  (i) Regulations. The County Executive may add Method (2) to administer this tax deferral program  Sec. 2. Sunset. County Code Section 52-51A, inserted Act, expires on April 1, 2010.  Sec. 3. Expedited Effective Date.  The Council declares that this legislation is necessal protection of the public interest. This Act takes effect 60 of law.  Approved:  Phillip M. Andrews, President, County Council Approved: | withholds information in order to obtain a deferral under (1) has committed a Class A violation;  (2) is liable for and must repay to the County any taxes plus interest and penalty at the rate we delinquent real property taxes from the date of the date of payment; and  (3) is liable for all court costs and expenses of the County attorney's fees, in a civil action brought by the County attor | withholds information in order to obtain a deferral under th  (1) has committed a Class A violation;  (2) is liable for and must repay to the County any detaxes plus interest and penalty at the rate which delinquent real property taxes from the date of the condate of payment; and  (3) is liable for all court costs and expenses of the Court attorney's fees, in a civil action brought by the Court Method (2) to administer this tax deferral program.  Sec. 2. Sunset. County Code Section 52-51A, inserted by Sec. Act, expires on April 1, 2010.  Sec. 3. Expedited Effective Date.  The Council declares that this legislation is necessary for the protection of the public interest. This Act takes effect 60 days after law.  Approved:  Philip M. Andrews, President, County Council Date  Approved: | withholds information in order to obtain a deferral under this Section (1) has committed a Class A violation;  (2) is liable for and must repay to the County any deferred in taxes plus interest and penalty at the rate which applit delinquent real property taxes from the date of the deferral date of payment; and  (3) is liable for all court costs and expenses of the County, including attorney's fees, in a civil action brought by the County.  (i) Regulations. The County Executive may adopt regulations Method (2) to administer this tax deferral program.  Sec. 2. Sunset. County Code Section 52-51A, inserted by Section 1 of Act, expires on April 1, 2010.  Sec. 3. Expedited Effective Date.  The Council declares that this legislation is necessary for the immerprotection of the public interest. This Act takes effect 60 days after it become protection of the public interest. This Act takes effect 60 days after it become protection of the public interest. This Act takes effect 60 days after it become protection of the public interest. This Act takes effect 60 days after it become protection of the public interest. This Act takes effect 60 days after it become protection of the public interest. This Act takes effect 60 days after it become protection of the public interest. This Act takes effect 60 days after it become protection of the public interest. | (2) is liable for and must repay to the County any deferred impact taxes plus interest and penalty at the rate which applies to delinquent real property taxes from the date of the deferral to the date of payment; and  (3) is liable for all court costs and expenses of the County, including attorney's fees, in a civil action brought by the County.  (i) Regulations. The County Executive may adopt regulations under Method (2) to administer this tax deferral program.  Sec. 2. Sunset. County Code Section 52-51A, inserted by Section 1 of the Act, expires on April 1, 2010.  Sec. 3. Expedited Effective Date.  The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect 60 days after it become law.  Approved:  Phillip M. Andrews, President, County Council Date  Approved: |

## LEGISLATIVE REQUEST REPORT

Expedited Bill 4-09
Development impact tax deferral

**DESCRIPTION:** 

Adds new Sections to the Transportation and School Impact Tax

law to allow the deferral of the payment of impact tax for

development for 12 months.

PROBLEM:

The current economic climate impacts the ability of builders to pay

the impact taxes prior to construction.

**GOALS AND** 

By deferring payment of impact taxes the legislation will

**OBJECTIVES:** 

encourage new construction.

**COORDINATION:** Department of Permitting Services.

FISCAL IMPACT: To be requested.

**ECONOMIC** 

To be requested.

**IMPACT:** 

**EVALUATION:** 

Subject to the general oversight of the County Council and County

Executive.

**EXPERIENCE** 

Not applicable

ELSEWHERE:

SOURCE OF

Tom Street, Assistant Chief Administrative Officer (240-777-

2559)

**INFORMATION:** 

APPLICATION

Yes.

WITHIN

**MUNICIPALITIES:** 

PENALTIES:

Class A violation.





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AS -LL BD AM

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# OFFICE OF THE COUNTY EXECUTIVE ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

#### MEMORANDUM



February 4, 2009

TO:

Phil Andrews, President

Montgomery County Council

FROM:

Isiah Leggett, County Executive

SUBJECT:

Proposed Legislation - Deferral of Impact Taxes

I am attaching for the Council's consideration a bill which would allow a business to defer payment of the transportation and school impact taxes for 12 months. I am also attaching a Legislative Request Report for the proposed bill.

This bill is one of four legislative proposals which I am submitting to the Council to implement the 11-point economic plan which I announced in December 2008. Each legislative proposal is designed to ease some of the difficulties experienced by local businesses as a result of the national economic downturn. The current economic climate impacts the ability of builders to pay impact taxes before construction. Allowing a builder to defer payment of impact taxes will help to encourage new construction which is aimed at retaining existing jobs and creating new job opportunities. This deferral is only temporary and enables the payment to be made at a point in the development process that is closer to when a builder can expect to receive income from a project. This will reduce carrying costs for a project.

My 11-point economic plan included a proposal to provide an economic impact analysis for all legislative and regulatory changes which would analyze the impact of each proposed change on local businesses. We are in the process of completing an economic impact analysis for this bill and will forward it to Council in the near future along with the normal fiscal impact statement for the bill. I look forward to working with Council as it considers this bill and my other three legislative proposals which provide opportunities for some measure of relief to our business community and residents.

IL:dg

Attachments (2)